

United States District Court Southern District of Texas

Case Number: 05CV1847

ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 13 of _____

☐ Exhibit to: _____
number(s) / letter(s) _____

Other: _____

1 the second time you heard something?

2 A. Correct.

3 Q. Thank you. No further questions.

4 RECROSS EXAMINATION

5 BY MR. SMYTH:

6 Q. Second time you heard something, I
7 take it, same, several seconds?

8 A. No.

9 Q. Was the total amount of time you
10 overheard this one speaker talking twenty
11 seconds on both occasions?

12 A. Approximately the first time and then
13 maybe twenty seconds or thirty seconds the
14 second time.

15 Q. So less than a minute. During this
16 entire minute that you were listening in on
17 these folks' conversation, you only heard one
18 person talking and nobody else?

19 A. Right.

20 Q. Okay.

21 MR. SMYTH: I have nothing further,
22 judge.

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. HILL:

3 Q. Mr. Licata, do you think you'd be able
4 to identify the individual if he were brought
5 into the courtroom and you had an opportunity to
6 look at them?

7 A. I believe so.

8 MR. HILL: No further questions.

9 MR. SMYTH: Nothing.

10 THE COURT: May he be excused?

11 MR. HILL: If we could hold him for
12 just a moment, judge, because we would like to
13 have the court bring the jurors in one at a time
14 and make an inquiry of them as to whether or not
15 they had any such conversations, if they were
16 making any comments in the courtroom so as not
17 to prejudice the others with that.

18 THE COURT: Do you all have an idea
19 which juror it is? Can you all not tell from
20 your juror list which juror it is?

21 MR. HILL: No, judge. I really -- I
22 have a good idea, but just from the description
23 he has given there are several that fit that
24 description. I don't want to say.

25 THE COURT: You have a good idea?

1 MR. HILL: I have a good idea, but I
2 don't know what his name is.

3 THE COURT: You can't figure what his
4 name is?

5 MR. HILL: I have a doubt. Maybe
6 three juror.

7 MR. LICATA: It was the first four
8 jurors that the bailiff let in.

9 MR. HILL: But the point is there were
10 others that listened; regardless whether they
11 said anything. Deliberation is not only talking
12 but listening. So I think everybody needs to be
13 brought in.

14 THE COURT: Let's target the first
15 juror. You have an idea what jurors he is
16 talking about?

17 MR. HILL: Is it the guy with kind of
18 reddish hair?

19 MR. SMYTH: I object to suggesting
20 that. He can't identify. He's got some kind,
21 allegedly has on a striped shirt, maybe.

22 THE COURT: I think that Joe knows who
23 he is talking about.

24 MR. SMYTH: Well.

25 THE COURT: You'll know him again if

1 you see him again?

2 THE WITNESS: I'm sure. He was the
3 taller of the people that was sitting out there
4 at the time.

5 MR. SMYTH: I thought he was standing.

6 THE WITNESS: Sitting. The one that
7 was doing the talking was sitting.

8 THE BAILIFF: So, you want me to get
9 somebody?

10 MR. HILL: They're back there
11 talking. You can hear, talking about have to
12 pay their lawyers.

13 MR. SMYTH: Pay the lawyers. Most
14 folks pay their lawyers.

15 THE WITNESS: Judge, I was trying to
16 find out who the attorneys were, what was going
17 on. I looked in that room to see if he was in
18 that courtroom. He was sitting facing that way,
19 the gentleman.

20 THE COURT: I want you to step there
21 and look in that room and then take a look
22 around and come back and tell me if you can
23 identify the person.

24 THE BAILIFF: You want me to go with
25 him?

1 THE COURT: He can step into that
2 door, just through that door right there.

3 THE WITNESS: I think it's the guy
4 with the beard and he is wearing a coat. There
5 is another gentleman.

6 THE COURT: Hold on a minute. We're
7 on or off the record? Are we on the record or
8 off the record? You think it's the guy with the
9 beard?

10 MR. HILL: It's that real slight,
11 almost imperceptible beard.

12 MR. SMYTH: In all fairness, let him
13 bring all of them and start inquiring who he
14 wants to finger.

15 THE WITNESS: Judge, I overheard the
16 conversation. I didn't want to get in the
17 middle of it.

18 THE COURT: You understand what Wayne
19 wants to do?

20 THE WITNESS: I don't want Don to get
21 mad at me. He sounds like he is mad.

22 MR. SMYTH: I'm representing the
23 interest of the State, you know.

24 THE WITNESS: I think it's in your
25 best interest that a jury not deliberate in the

1 hallway, so I wanted to tell. I wanted to bring
2 to the court's attention.

3 THE COURT: Wait, Joe. Nobody likes
4 it when anybody is out there doing that. I
5 don't like it, Don don't like it, Wayne doesn't
6 like it, Denice don't like it. I guarantee we
7 appreciate you came forward now.

8 THE WITNESS: I can't see a doorknob
9 without my glasses on, and I said I didn't have
10 my glasses on, and I know the badges were
11 purple, and I leaned over, and whoever the
12 gentleman was --

13 THE COURT: I understand that. Hold
14 on a minute. Ask the guy with the beard and
15 coat to come in.

16 MR. HILL: Should we have Joe step
17 out?

18 THE COURT: No, just sit right back
19 there, Joe. I suggest I'll make the inquiry.

20 MR. SMYTH: Oh, that's fine with me.

21 MR. HILL: Yes, sir.

22 (Juror Richard Baker enters the
23 courtroom).

24 THE COURT: Tell me what your name is.

25 THE JUROR: Richard Baker.

1 THE COURT: Mr. Baker, it has been
2 brought to my attention there were some jurors
3 having a conversation out in the hallway this
4 morning talking about the psychiatrists and
5 whether or not their testimony was influenced by
6 who paid them, all that kind of business.

7 THE JUROR: Not that I am aware of.

8 THE COURT: Not that you are aware
9 of?

10 THE JUROR: Paying of them, yes, we
11 discussed it, yes.

12 THE COURT: We who?

13 THE JUROR: Several of us.

14 THE COURT: Were you doing most of the
15 talking or was somebody else doing most of the
16 talking?

17 THE JUROR: We were all doing.

18 THE COURT: How many?

19 THE JUROR: There was four or five of us.

20 THE COURT: Four or five of you?

21 THE JUROR: Uh-hum.

22 THE COURT: There was not one person
23 talking more than another person?

24 THE JUROR: I don't think so. It was
25 a general discussion.

1 THE COURT: Okay. Why don't you do me
2 a favor. Why don't you have a seat out in this
3 hallway.

4 THE JUROR: Okay.

5 THE COURT: Yeah, have a seat out in
6 this hallway, please.

7 (The juror leaves the courtroom).

8 THE COURT: Was he the main one, Joe?

9 THE WITNESS: Judge, I believe so. I
10 believe he was the gentleman that was sitting
11 there doing most of the talking but, again, I'm
12 not a hundred percent sure because, you know, I
13 wasn't thinking of doing anything. I wasn't
14 thinking it was important at the time to get
15 physical description of what everybody was
16 wearing.

17 THE COURT: I got the impression from
18 what you were saying you felt one of the persons
19 was doing most of the talking.

20 THE WITNESS: I believe he was one of
21 the persons. He was in the few doing most of
22 the talking.

23 THE COURT: Okay. Do you think you're
24 going to be able to identify anybody else that
25 he was talking with?

1 THE WITNESS: Judge, as far
2 description of people, I got maybe a general
3 idea.

4 THE COURT: You know, I mean, when
5 they walk in here, be able to recognize them?

6 THE WITNESS: Possibly. There is one
7 fella that is maybe younger, blondish kind of
8 hair.

9 THE COURT: Yes.

10 THE WITNESS: I think he was maybe the
11 second guy.

12 THE COURT: Okay. Wayne?

13 MR. HILL: Yes, sir.

14 THE COURT: What do you want to do?

15 MR. HILL: Well, judge, I think we'd
16 like to bring the jurors in individually so that
17 you could ask them.

18 THE COURT: All twelve?

19 MR. HILL: Well, I mean, I think maybe
20 we have two now.

21 THE COURT: We have one now.

22 MR. HILL: No, I am sorry, I am
23 referring to the second gentleman that Joe has
24 indicated may have had the blonde hair. But,
25 yeah, right now, Mr. Baker. I don't know that

1 we really have had the gist of what Mr. Baker
2 was discussing or what they were discussing,
3 but, I mean, I'm concerned about the taint
4 that's occurring, and ultimately if the court is
5 convinced that there has been that type of
6 misconduct that requires a granting of a
7 mistrial, that we'll probably be moving for a
8 mistrial.

9 THE COURT: Well, so, my point is, how
10 do you want to do it? Do you want to do it one
11 by one? I feel like this juror can probably
12 tell us who the other jurors were who were
13 participants in the conversation. We can talk
14 to them individually, we can talk to the group
15 of the jurors as a group.

16 MR. HILL: I would prefer, if the
17 court is going to permit Mr. Baker to basically
18 identify the other individuals that he was
19 conversing with, to have him explain that to the
20 court, then have each of those individuals
21 brought in individually.

22 THE COURT: My problem is I'll bet Mr.
23 Baker doesn't even know their names.

24 MR. HILL: Maybe he'll have the same
25 difficulty that Mr. Licata has in terms of

1 identifying who these individuals are.

2 THE COURT: Oh, I think he knows which
3 ones they were. My problem is how do we summon
4 them into the courtroom without making them
5 all--

6 MR. SMYTH: Judge, if they are going
7 to make a motion, if they are big enough to
8 complain, stand up and take the medicine. If
9 the jury is tainted, has to be scrapped, start
10 over, then so be it, but let's don't do
11 something on supposition and I thinks and maybes
12 and twenty seconds and stuff like that. Let's
13 do it on the record so we do it right.

14 MR. HILL: I think we are doing it
15 correctly; we are doing it on the record; it's
16 not just supposition. Mr. Licata came in and
17 related what he overheard.

18 THE COURT: I don't have any problem.
19 All right, Freddy, ask Mr. Baker to come in.

20 (Juror Baker enters the courtroom).

21 THE COURT: Mr. Baker, I need to talk
22 to everyone who participated in the conversation
23 this morning out in the hallway.

24 THE JUROR: Okay.

25 THE COURT: I know you probably don't

1 know their names.

2 THE JUROR: Well, there is Bob
3 Johnson. Can't remember who was sitting there.
4 It was, you know, not an important conversation,
5 it was just general things.

6 THE COURT: All right. Does each side
7 want to go ahead and talk to Mr. Baker now?

8 MR. HILL: Judge, I'd like to.

9 THE COURT: Mr. Baker, this is what I
10 want to do now. What I want to do is put you
11 under oath.

12 THE JUROR: Yes, sir.

13 THE COURT: Put you on the stand so we
14 can find out what exactly you all talked about
15 this morning.

16 THE JUROR: Okay.

17 THE COURT: Raise your right hand.

18 (Oath administered to juror Baker at
19 this time).

20 THE COURT: Let me assure you, Mr.
21 Baker, that I want you to be absolutely candid
22 with us. Nothing that may have happened out in
23 the hallway this morning will subject anybody to
24 getting in trouble.

25 A. Uh-hum.

1 THE COURT: Okay. I mean, no one is
2 going to get in trouble over this; okay?

3 MR. SMYTH: I would ask Mr. Licata be
4 excused, at least leave the courtroom.

5 THE COURT: You want him excused for
6 good?

7 MR. SMYTH: No, sir, not excused for
8 good, just outside the presence of the jury.

9 MR. HILL: May I proceed?

10 EXAMINATION

11 BY MR. HILL:

12 Q. Mr. Baker, I am Wayne Hill. Along
13 with Ms. Crawford, we're attorneys for the
14 defense that are representing Mr. Eldridge.

15 First of all, I'd like to ask you,
16 sir, were you seated in the hallway just outside
17 of this courtroom this morning?

18 A. Yes, I was.

19 Q. Okay. And could you tell the court
20 how many individuals that are on the jury
21 currently impaneled in this case were with you?

22 A. I think three others.

23 Q. Were they all men?

24 A. No, there was two men and a woman. I
25 remember the woman because she rode up on the

1 elevator with me.

2 Q. Okay. And approximately how long did
3 you sit there or stand there and have a general
4 conversation with these individuals?

5 A. Twenty, twenty-five minutes.

6 Q. And could you tell us in your own
7 words what the content of that discussion was,
8 especially as it relates to what you may have
9 been saying?

10 A. It's hard to think about because it
11 was a general discussion about a lot of
12 subjects. We did happen to mention how many
13 more witnesses were going to be called, because
14 we commented when y'all came up here last night
15 she held up three fingers, she held up four
16 fingers, we were trying to decide if there were
17 any more psychologists or psychiatrists.

18 Q. Okay. Did you discuss the relative
19 merits of a witness being called by the defense
20 and paid by the defense as opposed to witnesses
21 called by the State, expert witnesses?

22 A. I don't think the fact of who paid
23 them is a matter we discussed, what they said.

24 Q. Okay. What do you recall the
25 testimony or the discussion being in terms of

1 what witnesses were talking about or what they
2 had actually said during the trial?

3 A. It's hard to remember because, like I
4 said, it was just a conversation. We were not
5 deeply involved in discussing the trial per se.

6 Q. But you were discussing the testimony
7 that had been?

8 A. Yes.

9 Q. Had been presented?

10 A. Yes.

11 Q. And, at that time, were the other
12 remaining members of the jury in your presence
13 or were they elsewhere?

14 A. They were, like I said, there were
15 only about four of us out there.

16 Q. So the other eight people who make up
17 the twelve person jury were not present?

18 A. During that conversation, yes.

19 Q. Was there a subsequent conversation
20 that took place in the presence of the other
21 eight people?

22 A. We all sat in there, we discussed it.
23 We did not remember instructions from the judge
24 that we could not discuss it amongst ourselves.
25 The instructions we all remembered was to not to

1 discuss it with our family and friends. We were
2 not aware we could not discuss it among
3 ourselves.

4 Q. Okay. So, at that point in time, when
5 you were having these discussions, you felt it
6 was okay?

7 A. Yes. If we had known we were doing
8 something wrong, we would not have done it.

9 Q. Do you recall anybody in the group
10 initially making any comment about the
11 likelihood that a witness that was called by the
12 defense and had been paid would likely render a
13 favorable opinion?

14 A. No.

15 Q. For the defense?

16 A. No, no.

17 Q. Can you unequivocally state that that
18 didn't occur, or you just cannot recall whether
19 that statement was made?

20 A. To the best of my knowledge, that
21 statement was never made.

22 Q. All right. Can you recall what
23 statements were made?

24 A. Like I say, it was just general
25 discussion of how we felt the testimony went.

1 The one hour viewing the patient versus the
2 three hours and this type of thing.

3 Q. Okay. Was there a general consensus
4 that had been developed among the four people?

5 A. No. No, that's something we already
6 found out, we don't have a consenses.

7 Q. So what about when the discussions
8 terminated out in the hallway and then you were
9 brought back into the anteroom here by the
10 bailiff, all twelve people were assembled at
11 that point as far as you know?

12 A. I'll say ten of us were there because
13 one of the ladies, it was very close to nine
14 o'clock when she showed up, or 9:15.

15 Q. Okay. So a discussion, a subsequent
16 or a second discussion of the evidence of the
17 case transpired at that point?

18 A. Yes.

19 Q. Again not all twelve people were
20 present?

21 A. Correct.

22 Q. Can you tell us whether or not there
23 was any difference in the discussion that took
24 place in this room versus what took place out in
25 the hallway?

1 A. Not really. It's, again, it's a
2 general discussion of the case, how we felt
3 about the way it was presented.

4 Q. Okay. Were there any comments that
5 stood out in your memory in terms of how the
6 evidence was presented other than the fact that
7 the one hour of observation versus--

8 A. Right, that's basically it. We don't
9 have a consensus of opinion. We still have not
10 formed a opinion. That's one thing we all
11 agreed on, that we have not formed an opinion.

12 Q. Okay. Was there any effort at
13 basically taking like a straw poll, if you will?

14 A. No.

15 Q. Like how many think one way or the
16 other?

17 A. No, we have not done that at all.

18 Q. You named a gentleman by the name of
19 Bob Johnson. I assume that just in the course
20 of being impaneled you kind of get to know some
21 of the people?

22 A. Well, you know, the thing is, Bob
23 Johnson is the fact try the representative for
24 Krause Hines (phonetically), and I am an
25 electrician, I use his product.

1 Q. Okay.

2 A. That's basically the reason I remember
3 him.

4 Q. Okay. So at least we know he was one
5 of the gentlemen sitting with you?

6 A. Right. The other one is the male
7 school teacher, he was there.

8 Q. Would you be able to show the bailiff
9 which gentleman that is?

10 A. Oh, yes.

11 Q. Okay. And then the other one was a
12 female?

13 A. Right. It's the, I think her hair is
14 red. The elderly lady with the red hair. I
15 think that's what color her hair is. She rode
16 up on the elevator with me.

17 Q. You would likewise be able to identify
18 her for the bailiff to bring up?

19 A. Yes.

20 Q. Was there anybody else, or at least in
21 the discussion that took place in the hallway?

22 A. Yes, that's the only ones that were
23 out there.

24 Q. And at the time that those discussions
25 were taking place, the evidence had not been

1 completed in the case; correct?

2 A. Right.

3 Q. And neither the defense or the State
4 had made any final arguments to you at that
5 point?

6 A. Correct.

7 Q. And the individual that was in court
8 earlier, yesterday morning seated at counsel
9 table with us, the defendant, Gerald Eldridge,
10 he was not present when any of that was taking
11 place?

12 A. No.

13 MR. HILL: I'll pass the witness, Your
14 Honor.

15 BY MR. SMYTH:

16 Q. You discussed the testimony of the
17 individual experts in the case?

18 A. Not necessarily the testimony. What
19 they said, no, I don't think we did that. I
20 just think we discussed the general overview.

21 Q. Just general concept of experts who
22 testify?

23 A. Yes.

24 Q. Whether or not they're believable and
25 things like that?

1 A. Uh-hum.

2 Q. Did you reach an opinion on -- you
3 haven't gotten the charge in this case. Did you
4 reach any kind of an opinion as to what the
5 verdict should be?

6 A. No.

7 Q. Okay.

8 A. As I said, then when all of us were in
9 there, we don't have a consensus. None of us
10 have a true opinion yet as to it.

11 Q. And this first conversation, you
12 stated four folks were sitting around there.
13 What time did this occur?

14 A. Between quarter to nine and 9:15.

15 Q. Quarter to nine, so quarter to nine,
16 9:15 is when you folks--

17 A. Right.

18 Q. What time did you arrive here?

19 A. I was downstairs about 8:30.

20 Q. Okay. But you didn't come up until
21 quarter of nine?

22 A. Well, that's when we got into this
23 discussion. We discussed a lot of things out
24 there.

25 Q. You haven't formed an opinion on this

1 case to be decided one way or another; is that
2 correct?

3 A. No, no, I haven't.

4 Q. I think it was brought out but not
5 directly. Do you recall any -- the judge giving
6 you any admonishments at anytime about not to be
7 discussing this case until you got the charge?

8 A. In fact, we were in there talking
9 about it awhile ago. The bailiff said something
10 to us about it, about discussing it. We said we
11 did not remember the judge telling us we could
12 not discuss it among ourselves. We remembered
13 him telling us last night not to discuss it with
14 our families.

15 Q. Okay. Would this discussion that you
16 had with the three other jurors at first, then I
17 guess the ten others, once you were placed in
18 this room outside, would that have any effect on
19 how you voted in this case?

20 A. Not me, no, because I have not decided
21 anything yet.

22 Q. Did anybody, had anybody decided
23 anything?

24 A. Not that I know of.

25 Q. So nobody had an opinion I think the

1 guy is competent or I think the guy is
2 incompetent?

3 A. No, nothing has been said about that.
4 Like I say, we had the general discussion about
5 everything that's been said, but as far as
6 anyone venturing their opinion, I don't think
7 anyone had.

8 Q. Okay. So, as far you know, you don't
9 recall anybody saying they'd come to a
10 conclusion one way or another?

11 A. No.

12 Q. Would you be able to set aside
13 anything that you heard during this conversation
14 and not take it into any deliberations that
15 might eventually occur in the case and then
16 return your verdict based on what all the facts
17 were after you get the charge?

18 A. Absolutely. Because I do not feel
19 that anything we said out there in any way
20 prejudiced anyone of us.

21 Q. Okay. Could you promise the court as
22 well as the defense attorneys in this case as
23 well as the State that you would from this point
24 on certainly not discuss anything about this
25 case?

1 A. Absolutely. Like I said, if we
2 remembered the judge telling us not to discuss
3 it, we would not have.

4 Q. Certainly not discuss it until you get
5 the charge?

6 A. That's correct.

7 Q. Also, would you -- I don't know how
8 many of your fellow jurors we may end up talking
9 to, but could you also promise us, I'm sure the
10 judge will probably admonish you, not to say
11 anything to them about what has gone on inside
12 this room outside of their presence?

13 A. Absolutely.

14 Q. Okay.

15 MR. SMYTH: I have nothing further.
16 Thank you, sir.

17 BY MR. HILL:

18 Q. Let me ask you something. I think my
19 question may have had too many facts in one
20 question that I asked you before. Was there a
21 discussion about the experts as you sat out in
22 the hallway?

23 A. Well, not specifically them. The fact
24 that we said that, you know, the difference
25 between the one hour and the three hour, the

1 amount of testimony that was given. But as far
2 as what was said, no.

3 Q. Was there any discussion about the
4 credibility of a witness?

5 A. No.

6 Q. Of a witness that would work in the
7 jail for the forensic unit versus a witness that
8 would testify in behalf of the defense?

9 A. No. We did not discuss the Defense
10 side. You know. Per se we did not say anything
11 about, you know, the lawyer, I mean psychiatrist
12 for the State or the Defense.

13 Q. Okay. When you say per se, what does
14 that mean?

15 A. Not specifically.

16 Q. Okay. Well, how about generally?

17 A. Generally we discussed the testimony.

18 Q. Okay. And in that context of
19 discussing the testimony, what was said?

20 A. To show you how important it was, I
21 really do not remember. I mean, we just
22 discussed a lot of things out there, just like
23 we've been sitting in there discussing politics,
24 lawyers.

25 THE COURT: In that order?

1 A. More or less, yes, sir, Your Honor, we
2 did. And how to cure the health care needs of
3 the country, you know. We had a lot of
4 discussions.

5 Q. Okay. Thank you, sir. I appreciate
6 it.

7 MR. SMYTH: Nothing further, Your
8 Honor. Thank you, Mr. Baker.

9 THE COURT: Mr. Baker, have a seat out
10 in this hallway.

11 Off the record.

12 (Off the record)

13 (Juror Bob Johnson enters the
14 courtroom).

15 THE COURT: Come on up, Mr. Johnson.
16 Let me advise you you've done nothing wrong,
17 that you're not in trouble, but it has been
18 brought to our attention that some jurors were
19 discussing the trial this morning on the bench
20 outside, and we're making an inquiry simply into
21 what was said; okay?

22 A. Sure.

23 THE COURT: We got to put you on the
24 witness stand, I want to put you under oath.

25 (Oath administered to juror Bob

1 Johnson).

2 THE COURT: Once again, you've done
3 nothing wrong, so be candid, just let us know
4 what the conversations were about. I'll let
5 these lawyers ask all those questions.

6 MR. HILL: Thank you, judge.

7 EXAMINATION

8 BY MR. HILL:

9 Q. Mr. Johnson, my name is Wayne Hill.
10 Denice Crawford, we both represent Mr.
11 Eldridge.

12 A. Uh-huh.

13 Q. Could you, please, tell me, just for
14 purposes of the record, you're a juror in this
15 cause, State of Texas versus Gerald Eldridge?

16 A. Yes, sir.

17 Q. All right. And you are currently
18 seated along with eleven other Harris County
19 citizens as a juror in this case; correct?

20 A. Yes, sir.

21 Q. You have not been given a court's
22 charge, a written document detailing what the
23 law is as it relates to this case yet; have
24 you?

25 A. No, sir.

1 Q. All right. And the evidence is not
2 closed. By that I mean the State has not stood
3 up by one of its representatives and said the
4 State rests. And we, likewise, have not
5 completed the trial; correct?

6 A. That's correct, right.

7 Q. No final arguments have occurred in
8 this case?

9 A. No, sir.

10 Q. All right. Directing your attention
11 to earlier this morning, March 2nd, 1994, did
12 you have an occasion to be in the hallway
13 outside of this small courtroom where we
14 currently are sitting?

15 A. Yes, sir.

16 Q. And were you in the presence of some
17 of the other jurors at that time?

18 A. Yes, sir.

19 Q. Do you know the names of the jurors
20 that you were with, sir?

21 A. No, I don't. I know their occupation,
22 one of the gentlemen's occupation.

23 Q. Okay. Well, start with the one that
24 you know the occupation of.

25 A. He is a school teacher, he has

1 glasses, he sat right at the end, because he was
2 standing up every time that we had to call a
3 witness yesterday, but I don't know his name.

4 Q. You'd be able to identify him, obviously?

5 A. Yes.

6 Q. Tell the bailiff who he is?

7 A. Yes.

8 Q. Okay. And the other individuals, please?

9 A. The other gentleman who you just
10 called in here a few moments ago.

11 Q. He was previously identified as Mr.
12 Baker. Does that ring a bell at all?

13 A. I don't know any of the other jurors'
14 names.

15 Q. Okay.

16 A. But, yeah, the other gentleman who
17 came in here who had the glasses with the gray
18 hair, tall gentleman, he was there. Another
19 school teacher, I don't know her name, but I
20 could identify her as well, and another
21 gentleman, there is one other gentleman.

22 Q. In any event, sir, would you be able
23 to accompany the bailiff and basically say these
24 are the other individuals that we are referring
25 to?

1 A. Yes, sir.

2 Q. So the court could ask them to come in
3 and talk?

4 A. Yes, sir.

5 Q. Would you, please, tell the court what
6 the basic conversation was that was taking place
7 out in the hallway earlier this morning?

8 A. Sure. Well, basically, we were just
9 discussing the witnesses brought up,
10 specifically the credibility of the witnesses.

11 Q. Okay. What about the credibility of
12 the witnesses? How did that factor into the
13 discussion?

14 A. Well, I think what really had
15 transpired was that we were just talking about
16 the witnesses that had been brought forth
17 before, whether or not we thought the one was
18 more or less credible, talking about their
19 testimony.

20 Q. Okay.

21 A. Certain things about their background.

22 Q. Do you recall if you were an active
23 participant in that, or was there one individual
24 that seemed to be doing most of the talking
25 during the course of that discussion?

1 A. I couldn't say, quite honestly. I
2 mean, I know I had input.

3 Q. In fairness to you, let us hear what
4 your input was.

5 A. I did bring up one point that I
6 thought was interesting, was the fact that one
7 of the witnesses had heard three cases in three
8 years, where the other witness had heard roughly
9 fifteen hundred cases in ten to twelve years.
10 That was something that I did bring up.

11 Q. Okay. Did that, was there a further
12 discussion of which witness it was or which side
13 had called the witness that had only appeared in
14 three cases in three years?

15 A. I'm not sure if I follow.

16 Q. Okay, which witness was it that you
17 were referring to, just for purposes of the
18 record.

19 A. Sure. The first witness who had been
20 the first psychologist that was, I believe,
21 representing or you had called your witness.

22 Q. That would be Doctor Richard Austin,
23 if you've forgotten his name.

24 A. Yes, that's correct.

25 Q. He was identified in the conversation

1 as a defense witness or defense expert?

2 A. I'm not sure if that was actually
3 brought up. I think it was more or less it was
4 more casual, it was more or less talking about
5 one of the witnesses brought up. I don't think
6 there was any conversation whether or not that
7 witness was for the defense. I may be incorrect
8 on that, but I don't believe it was brought up
9 in that context.

10 Q. Was there any discussion about the
11 relative credibility of witnesses called by the
12 State versus witnesses called by the defense, in
13 the likelihood that a witness is called by the
14 defense would likely testify favorably to the
15 defense?

16 A. Again, I'm not sure I completely
17 understand your question.

18 Q. Was there a discussion of defense
19 witnesses, first of all, being paid for their
20 testimony?

21 A. I don't recall any discussion like
22 that.

23 Q. Okay. Was there a discussion
24 generally about the defense witnesses or defense
25 experts?

1 A. Well, there was discussion about that
2 one witness in particular.

3 Q. And can you be any more particular in
4 terms of what was said?

5 A. That doctor, again, I don't recall his
6 name, but the first doctor who came up who is
7 your witness.

8 Q. Uh-hum. What was said about his
9 credibility? You said you talked generally
10 about the credibility of the witnesses.

11 A. Again it was more or less a discussion
12 as to, in my discussion was made or the comment
13 that I made was that one witness had come up and
14 one of the things that was brought up during the
15 examination was that one of the witnesses had
16 said that he had heard three times or three
17 cases within the last three years, where the
18 other witness had made a statement during the
19 examination of hearing roughly fifteen hundred
20 cases in the last ten to twelve years.

21 Q. Did that have, does that have an
22 impact on you at the current time in terms of
23 the credibility of those two witnesses and the
24 relative merits of what they say?

25 A. Yeah, I would say so.

1 Q. Have you, being candid with the judge?

2 A. Sure.

3 Q. Have you already formed an opinion?

4 A. No.

5 Q. In terms of which expert is more
6 credible?

7 A. No, quite honestly, I have not.

8 Q. Okay. Now, we've talked generally or
9 specifically about what you had said; correct?

10 A. Correct.

11 Q. Do you recall any other jurors making
12 any comments?

13 A. One comment that was made, and I don't
14 know who made this comment, was the fact of one
15 of the witnesses had interviewed the defendant
16 for about an hour where the other witness during
17 the examination had interviewed the witness on
18 three separate occasions for a total of roughly
19 three hours. That did come up. I could not
20 tell you who brought that up, but that was a
21 conversation that was brought forth.

22 Q. Okay. At the time that you were
23 having these discussions in the hallway, there
24 were only four of the jurors present?

25 A. I believe. I may be incorrect on

1 that, but there was no more than five for sure,
2 and I believe it was four. There may have been
3 a fifth.

4 Q. Were you basically discussing the
5 evidence at that time that had been presented to
6 you up to that point?

7 A. Yes, but we were discussing other
8 things that had nothing to do with the case.

9 Q. All right. At some point, were you
10 then ushered into an anteroom or waiting room
11 inside this courtroom?

12 A. Yes. We were not ushered, what
13 happened, the bailiff opened, unlocked the
14 door. We were waiting for the door to be
15 opened.

16 Q. Could you tell whether or not for sure
17 all twelve jurors were sitting in the waiting
18 room when the door was first opened up?

19 A. We were the first one in there, so
20 there was nobody else in the room.

21 Q. Were the discussions of a continuing
22 nature as other jurors entered the room?

23 A. I don't believe so. No, sir.

24 Q. Was there any discussion, for that
25 matter, in the waiting room, once more than just

1 the first five were sitting there?

2 A. There were discussions about the case,
3 but they were more along the lines of curiosity
4 as to how long the case would go, more
5 witnesses. There was speculation amongst
6 everybody as to further witnesses, where they
7 would be coming from, what type of testimony
8 they would have.

9 Q. Okay.

10 A. And, again, I may be incorrect on, but
11 I don't believe there was really a discussion
12 per se among all twelve as to the credibility or
13 merits of the testimony that had been brought up
14 in the previous two days.

15 Q. Okay. But was there a discussion
16 generally, it may not have been all twelve, but
17 there was some number of people that were
18 sitting and discussing the case prior to the
19 judge giving you a written charge or the
20 evidence all being presented to you?

21 A. Again, could you repeat the question?

22 Q. Yes. The discussions took place prior
23 to the charge being given to you and before all
24 the evidence was presented to you?

25 A. The discussions and questions that I

1 just talked about, yes.

2 Q. Was there a general consensus that
3 was developed by the jurors that were present as
4 to the outcome of the case?

5 A. No.

6 Q. Was there any effort, I guess, for
7 lack of a better phrase, taking a straw poll or
8 a straw vote?

9 A. No, sir.

10 Q. Were you able to discern what the
11 other jurors' beliefs or feelings were based
12 upon your conversations with them?

13 A. I could say this. I would, based on
14 some of the comments that came out, such as what
15 I just brought up, I would have a feeling that I
16 would, I feel I would know more as to what that
17 individual might be leaning towards as to
18 whether or not that individual was definitive
19 one way or the other, no.

20 Q. But there were general discussions of
21 issues that you were going to be called upon to
22 resolve, that being the competency of the
23 defendant?

24 A. Well, there was more discussions,
25 again, about the two witnesses in question that

1 I brought up before.

2 Q. The other witness, by the way, for
3 purpose of the record, was a witness called by
4 the State of Texas, the one that you said
5 interviewed fifteen people or dealt with fifteen
6 people or fifteen hundred cases in a ten to
7 twelve year period?

8 A. Yes, sir.

9 Q. Do you recall the name of that
10 individual?

11 A. I know he was a doctor with private
12 firm with glasses.

13 Q. Would it be Doctor Silverman?

14 A. Yes.

15 MR. HILL: I have no further
16 questions. Thank you, sir.

17 BY MR. SMYTH:

18 Q. Let me make sure I understand, the
19 record is clear. You folks discussed the
20 experts' testimony?

21 A. Correct.

22 Q. To some extent?

23 A. To some extent, yes.

24 Q. While you were out in the hall. At no
25 time, either out in the hall or in the anteroom

1 where you only discussed wonder what in the
2 world is coming today type testimony, you didn't
3 take a vote?

4 A. Correct.

5 Q. On whether or not the defendant is
6 competent or incompetent, you didn't take a
7 straw poll on whether the defendant is competent
8 or incompetent?

9 A. That's correct.

10 Q. Nobody expressed their opinion one way
11 or the other whether the defendant is competent
12 or incompetent?

13 A. That's correct.

14 Q. Best you think you might be able to
15 say they might be leaning one way or the other,
16 but since nobody has taken a vote, nobody
17 expressed their opinion, you really don't know
18 how they're leaning?

19 A. That's correct.

20 Q. You yourself have not formed an
21 opinion one way or another?

22 A. That's correct.

23 Q. Or how you would vote in this case?

24 A. That's correct.

25 Q. And you don't have a slightest idea

1 what the eventual outcome of this case would be?

2 A. No, I don't.

3 Q. Nobody else expressed their opinion as
4 to how the case should be resolved at this
5 point; is that correct?

6 A. No, I'm sorry --

7 Q. No one said I think the guy is
8 competent or I think the guy is incompetent?

9 A. No.

10 Q. The ultimate issue that this jury is
11 going to be asked to make?

12 A. Nobody has come out and made a
13 statement to my knowledge that has been anything
14 like that.

15 Q. Okay. Did you hear, I'm not saying it
16 happened--

17 A. Right.

18 Q. But do you recall whether or not the
19 judge gave admonishments yesterday about
20 discussing the case among yourselves?

21 A. No, I did not.

22 Q. Do you recall whether or not the judge
23 gave some admonishments about discussing the
24 case with friends, neighbors, relatives,
25 co-workers, things like that?